IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13511 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MOHAMMAD YUNUS ALIAS KHOPDI ABDUL KARIAM SHAIKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 13511 of 2003

MS KRISHNA U MISHRA for Petitioner No. 1

MR AMRISH K PANDYA for Petitioner No. 1

MS MITA PANCHAL Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 05/11/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed

against him by the Police Commissioner, Surat City on 17.5.2003 under the exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short).

The grounds served upon the petitioner and placed on record reveal that the detaining authority took into consideration the fact of registration of offences against the petitioner under sec. 457, 380 and 114 of IPC for the theft committed allegedly by the petitioner. The detaining authority also relied upon two statements as recorded by the sponsoring authority in-camera on 6.5.2003 and on 7.5.2003 and as verified by the detaining authority on 14.5.2003 revealing the incidents of 28.12.2002 and 11.1.2003. From the above material, the detaining authority has passed the order impugned in this petition.

Heard ld. advocate Mr. Pandya for Ms Krishna Mishra for the petitioner and Ms. Panchal ld. AGP for the respondents at length.

Out of various contentions raised and controverted on behalf of the respondents, the matter can be disposed of on the ground there was any material before the detaining authority as to reach to the subjective satisfaction that the activities of the petitioner were prejudicial to the maintenance of public order. As per the settled law, the degree and the extent of reach of the objectionable activity in question upon the society is vital for considering the question whether a man committed breach of 'law and order' or 'public order'. The activities which affect law and order and those which disturb public order may not be different but in their potentiality and effect upon even tempo of the society and public tranquillity there is a vast difference. In each case, therefore, the court have to see the length, magnitude and intensity of the questionable activities of a person to find out whether his activities are prejudicial to maintenance of public order or only law and order. Even the potentiality of the act to disturbing the public tempo of life makes it prejudicial to the maintenance of public order. The facts of each case requires to be judged from the above proposition. So far as the facts of this case are concerned, merely registration of the offences against the petitioner three in numbers and especially when cases were pending would not lead to the subjective satisfaction that the activities of the petitioner were prejudicial to the maintenance of public order. Neither

public at large nor a section of society is affected or even the tempo of life is affected by a fact of registration of offence against the petitioner. To probe further, the detaining authority also relied upon two in-camera statements as recorded by the sponsoring authority revealing the incidents of 28.12.2002 and 11.1.2003. On scrutiny of such statements, the incident occurred on 28.12.2002 discloses that on that day, when witness was doing his business, the petitioner and his associates approached the petitioner and conveyed that they had TV, Recorders, Speakers in rickshaw and forced the witness to place all these materials at the shop of witness or selling the same. The petitioner and his associates also demanded Rs. 2000/-, as alleged. The witness was aware of the activities of the petitioner and, therefore, the witness refused to act according to the say of the petitioner and his associates. On refusal by the witness, the petitioner and his associates were instigated and dragged the witness out of shop and started beating. Though crowd was gathered but none rescued the witness on account of threat of petitioner and his associates. While second incident which occurred on 11.1.2003, the witness was approached by the petitioner and his associates and was asked to purchase scrape which they had in the bags. As alleged, the witness was aware of anti social activities of the petitioner, he refused. On refusal, the witness was beaten and when crowd attempted to rescued the witness, the petitioner and his associates took out the weapon from the rickshaw and threatened the crowd, so the crowd was disbursed and the traffic in the locality was disrupted. On going through the incidents narrated by the witnesses as aforesaid, and taking the allegations on their face value, it is difficult to comprehend that they were the incidents involving the public order. They were the incidents directed against the individual having no adverse effect prejudicial to the maintenance of public order disturbing the even tempo of life. Therefore, the material which is served upon the petitioner do not comprehend that that activities of the petitioner were prejudicial to the maintenance of public order. The activities may be taken care of by the ordinary law and may be problem in respect of law and order. In this view of the matter, the order impugned is required to be set aside on this ground alone.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 17.5.2003 by the Police Commissioner, Surat city, under the PASA Act against the petitioner is quashed and set aside. The petitioner is

directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs.

(J.R. VORA, J.)
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